IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY THE 24TH SEPTEMBER 2007 /2ND ASWINA 1929

Crl.MC.No. 947 of 2003(C)

(ORDER IN CC NO. 819/2000 PENDING BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE NO. I, KOLLAM,
CRIME NO. 258/2000 DT. 8/5/02 OF KUNDARA POLICE STATION)

PETITIONER: ACCUSED 1 TO 4:

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1. T.S.SAWHNEY,SENIOR REGIONAL MANAGER,
HINDUSTAN PETROLEUM CORPORATION LTD.,TATA ROAD,
ERNAKULAM.
(PRESENTLY WORKING AS CHIEF REGIONAL MANAGER,
HINDUSTAN PETROLEUM CORPORATION LIMITED,
DELHI REGIONAL OFFICE).

2. RAJU NAIR, SALES MANAGER,
HINDUSTAN PETROLEUM CORPORATION LIMITED,
TATA ROAD, ERNAKULAM.
(PRESENTLY WORKING AS RESIDENT MANAGER,
H.P.C.L., BANGLADESH).

3. SIVAKUMAR, AREA MANAGER,
HINDUSTAN PETROLEUM CORPORATION LIMITED,
TATA ROAD, ERNAKULAM.
(PRESENTLY WORKING AS EXECUTIVE SALES OFFICER,
HINDUSTAN PETROLEUM CORPORATION LIMITED,
THIRUVANANTHAPURAM).

4. RAGHUMANI, ENGINEERING MANAGER,
HINDUSTAN PETROLEUM CORPORATION LIMITED,
TATA ROAD, ERNAKULAM.
(PRESENTLY WORKING AS MANAGER, E & P SERVICE
TERMINIAL, H.P.C.L., MUMBAI).

BY ADV. SRI.A.M.SHAFFIQUE
SMT.PRIYA KRISHNAMOORTHY
SMT.PRIYA MANJOORAN

CRL.MC NO. 947/2003

RESPONDENTS: COMPLAINANT:
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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

***2. S. RANJIT KUMAR, S/O. LATE KOTTOOR SADANANDAN,**
AGED ABOUT 40 YRS, KOTTOOR HOUSE,
ELAMPALLOOR VILLAGE, KUNDARA, KOLLAM.

***ADDL. R2 IS IMPLEADED AS PER ORDER DATED**
18/07/2003 IN IA NO. 7157/2003.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 24/09/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.MC NO. 947/2003

ORDER ON CMP NO. 1106/2003 IN CRL.MC NO. 947/2003.

DISMISSED

24/09/2007. SD/- K.R.UDAYABHANU, JUDGE.

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K.R. UDAYABHANU, J.

CRL.M.C.NO.947 OF 2003

DATED THIS THE 24TH SEPTEMBER 2007

ORDER

The petitioners, who are the officials of Hindustan Petroleum Corporation Ltd. have sought for getting quashed the proceedings in C.C.No.819/2000 in the file of Judicial First Class Magistrate-I, Kollam with respect to the offences under Sections 143, 147,447, 427 read with Section 149 I.P.C. It is submitted that the prosecution allegation is that the petitioners who are accused 1 to 4 and A5, the Contractor acting on the direction of A1 to A4 in violation of the order of the Additional Munsiff, Kollam to maintain the status quo got the workers of A5, the Contractor, i.e. A6 to A12 form an unlawful assembly on 6-12-2000 at 1.30 p.m. and demolished the service station and machineries causing loss to the tune of Rs.7 lakhs to Cws.1 to 3. Annexure-I is the charge sheet and Annexure-II is the copy of the F.I.R. It is submitted that the petitioners had initiated the proceedings under Public Premises Eviction of (Unauthorised Occupants) Act, 1971(hereinafter referred to 'the Act'). The Estate officer appointed by the Government of India under the above Act after hearing the parties had passed an order of eviction vide E.O.No.11/12/1993 dated 19-9-1994 against CW1. He had filed an

appeal before the District Court, Kollam over the order of the Estate Officer which was dismissed. CW1 also filed revision vide C.R.P.No.1694/1997 which was also dismissed vide order dated 26-11-1997 granting four months time to surrender the property. The property was not surrendered within the time limit and the Hindustan Petroleum Corporation took possession of the premises through its officers with the help of police on 21-4-1998. Annexure-III is the mahazar dated 21-4-1998 of taking possession of the property in the presence of the police and to which the police officers are also witnesses . The order of the Estate Officer as confirmed by the appellate order is final vide Section 10 of the Act. Subsequently, Cws.2 and 3, sisters of CW1 filed O.S.No.1026/1998 and O.S.No.402/1998 before the Munsiff Court for declaration that the order of the Estate Officer is invalid and for recovery of possession of plaint schedule property and movables and to restrain the company from demolishing the structures and removing the movables. O.S.No.402/1998 was dismissed as not pressed and O.S.No.1026/1998 was dismissed by judgment and decree dated 31-1-2002. A copy of the decree and judgment dated 31-1-2002 in O.S.No.1026/1998 is produced as Annexures-IV and V. During the pendency of O.S.No.1026/1998, an interim injunction application was

filed by the plaintiff therein and an order of status quo was passed without notice to the petitioners herein. The application filed for taking action for violating the above order under Order XXXIX Rule 2 A was dismissed vide a considered order.

2. It is submitted that the Judicial First Class Magistrate has taking cognizance of the matter and initiated proceedings against the petitioners which is sought to be quashed on the ground that the criminal proceedings initiated are invalid in view of the fact that the civil court itself has adjudicated the matter and dismissed the claim of the plaintiff in O.S.No.1026/1998 and further vide Section 15 of the Act no court is empowered to issue an order of injunction to interfere with the order of the competent officer or the appellate authority. Moreover, the offence alleged under Section 188 is hit by Section 195 Cr.P.C.

3. I find that the proceedings taken before the civil court for violation of the order of status quo was considered by the court below in detail at the time of the adjudication of O.S.No.1026/1998 (Annexure-V) and rejected the case set up for taking action for violation of the order of status quo and also rejected the claim for compensation. Evidently, the remedy available for the plaintiff therein is through the civil court and the same was exercised. As pointed out

by counsel for the petitioner, this Court in **Joseph George v.Sate of Kerala, 2000(3)KLT 275** have considered the scope for invoking Section 188 I.P.C. and held that Section 195(1)Cr.P.C. is a clear bar for taking cognisance of the offence. It is also held that Section 188 of the Act will not be applicable with respect to orders of a court and that Section 188 I.P.C. does not contemplate the orders passed by the civil or revenue courts in judicial proceedings. Further unless a public servant files a complaint in writing, Magistrate cannot take cognizance of the offence under Section 188 I.P.C. Moreover Section 15 of the Act constitute a bar for initiating proceedings with respect to the matters covered by the above statute. In the circumstances, I find that the proceedings initiated against the petitioners and others vide C.C.No.819/2000 amounts to abuse of process of court and is liable to be set aside and I do so. The Crl.M.C.is allowed.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.M.C.NO. 947 OF 2003

ORDER

24-9-2007